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BEFORE THE
ILLINOIS COMMERCE COMMISSION

GARY PIERCE)
)
-vs-) DOCKET NO.
) 05-0151
CENTRAL ILLINOIS LIGHT COMPANY)
d/b/a AmerenCILCO)
)
Complaint as to billing/charges in)
Springfield, Illinois.)

Springfield, Illinois

Tuesday, December 20, 2005

Met, pursuant to notice at 10:30 A.M.

BEFORE:

MR. JOHN ALBERS, Administrative Law Judge

APPEARANCES:

MR. GARY PIERCE
2212 Catalina Lane
Springfield, Illinois 62702

(Appearing pro se.)

SULLIVAN REPORTING COMPANY, by
H. Lori Bernardy, Reporter
Ln. #084-004126

1 APPEARANCES: (CONT'D.)

2 MR. EDWARD C. FITZHENRY
3 Ameren Corporation
4 1901 Chouteau Avenue
5 St. Louis, Missouri 63166-6149

6 (Appearing on behalf of Ameren.
7 Corporation.)
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1		<u>I N D E X</u>			
2	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
3	STATEMENT				
4	By Mr. Pierce	35	55		
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1 Any preliminary matters this morning?

2 MR. PIERCE: Yeah. If you could answer me -- I
3 did get -- would this be a preliminary matter if I
4 got in touch with the witness?

5 JUDGE ALBERS: The gentleman we spoke about
6 last time?

7 MR. PIERCE: Yeah, Mr. Musik(sp).

8 JUDGE ALBERS: Actually, it could be. I guess
9 I'm not sure what you're going to ask, so tell me.

10 MR. PIERCE: Well, what I was going to say is
11 this: He's on the road. So is there any way if I
12 could get a notarized statement for him or get him
13 later on to send what I needed from him. Would that
14 be possible?

15 JUDGE ALBERS: You're asking if you could
16 present him as a --

17 MR. PIERCE: Either as a witness or getting
18 from him, if I could get it in a letter form, a
19 statement or something.

20 JUDGE ALBERS: Well, the concerns I have with
21 that are two: One, if we allowed him to come back
22 and testify on the stand later when we're running up

1 against the deadline in this case, and if we allowed
2 any statement, then there's a question of how CILCO
3 would be able to rebut his statement then.

4 They wouldn't have an opportunity to
5 question him under oath so.

6 MR. PIERCE: I was just checking to see 'cause
7 I finally got a call -- the phone number I was given
8 wasn't right, but the address was right and I finally
9 got in touch with him and he's on the road.

10 So it's hard for me -- you know, for
11 him to be here today. But he did express some
12 interest in helping me. That's why I was --

13 JUDGE ALBERS: Okay. Well, those are the
14 concerns I have, the statutory deadline.

15 MR. PIERCE: Well, do I have the opportunity to
16 present something maybe before that March 4 deadline?

17 JUDGE ALBERS: I can tell you, my statutory
18 deadline is March 4. We still have possibly briefs
19 to take care of, a Proposed Order, exceptions and
20 replies, and the last Commission meeting before
21 March 4, I believe, is February 23.

22 I can double-check right now actually.

1 Yes, it is. And to give both of you an opportunity
2 to --

3 MR. PIERCE: There's a chance I could possibly
4 have him come.

5 JUDGE ALBERS: Well, what I'm saying is --
6 we're talking -- I'll let Mr. Fitzhenry respond, if
7 you'd like to say anything before I make a ruling.

8 MR. FITZHENRY: There has to be a point in time
9 where you have to have the record marked "Heard and
10 Taken." You're in the best position to decide that.

11 If Mr. Pierce does obtain a statement,
12 a notarized statement from Mr. Musik, one suggestion
13 would be that he would first let me look at it.

14 And if I didn't have any objections
15 for it to go into the record, I could tell him and
16 tell you that and it would go into the record.

17 I would want to reserve a right though
18 to object to it going into the record subject to me
19 having Mr. Musik here to answer any questions that we
20 thought were appropriate. But, you know, all that
21 would have to be done sometime very, very, very soon.

22 JUDGE ALBERS: I agree. Did Mr. Musik give you

1 any indication of when he was available?

2 MR. PIERCE: He just stated that he had some
3 very good information that he could, you know, that
4 he could answer to me.

5 And I called him and asked him could
6 he be here today -- I asked him if he could be here
7 and he says he's on the road. But he did express
8 some interest in helping me, so.

9 I told him I could check and see about
10 his testimony or if he could be here in between the
11 time that we had if that's what I had to do so.

12 So I mean, if I can be given some time
13 and to see if he could do that, then I can get back
14 with Mr. Fitzhenry and yourself as to whether or not
15 he will.

16 JUDGE ALBERS: Well, a lot of my concern is on
17 timing, and given the discussion we had the last time
18 we met about making sure we had everything lined up
19 for today, my Ruling is that we need to have
20 everything wrapped up by the end of today. If you
21 are concerned about it, if you'd like to appeal my
22 decision straight to the Commission, that's fine.

1 You're free to do so.

2 But my Ruling today is that we need to
3 have the record marked "Heard and Taken" today.

4 MR. PIERCE: Okay.

5 JUDGE ALBERS: So any other preliminary
6 matters? Anything further?

7 (No audible response.)

8 JUDGE ALBERS: Well, as the Complainant,
9 Mr. Pierce, you get to go first.

10 If you'd like to stand and raise your
11 right hand, I'll swear you in. You might as well
12 stay where you're at.

13 (Whereupon the Witness was sworn
14 by the Administrative Law
15 Judge.)

16 G A R Y P I E R C E,
17 having been first duly sworn by the Administrative
18 Law Judge, witnesseth and saith as follows:

19 STATEMENT

20 BY MR. PIERCE:

21 As I stated before, I don't, you know, have these
22 photographs documented, but you can glance at them

1 and I will try and explain because I don't have them
2 in order or nothing. But I will try and explain as
3 best as I can.

4 That first picture there is just --

5 JUDGE ALBERS: Well, actually we need to go
6 ahead and identify these so they can go in the
7 record.

8 Are these the only set you have?

9 MR. PIERCE: No, I have another set.

10 JUDGE ALBERS: Okay.

11 MR. PIERCE: Do you want me to mark them like
12 "1," "2," or whatever?

13 JUDGE ALBERS: Yes, maybe it would be easiest
14 if I come down there and we can all look at these on
15 the table together.

16 MR. PIERCE: Okay.

17 JUDGE ALBERS: Do you have a copy with you,
18 Mr. Fitzhenry?

19 MR. PIERCE: He has a copy. I mailed him a
20 copy. I mailed him a copy of all of this the other
21 day.

22 JUDGE ALBERS: Okay.

1 MR. PIERCE: This other set of copies, attached
2 copies, was for your secretary or whatever. He can
3 take a look at those with you. He can use those.

4 JUDGE ALBERS: Okay. I think I remember
5 indicating when we last met that we need color
6 copies. Obviously, there's some difference in the
7 ability to look at color versus black and white
8 copies.

9 MR. PIERCE: Yeah, I gave him the other
10 photocopies. Those are yours.

11 JUDGE ALBERS: Well, I thank you for that, but
12 I think Mr. Fitzhenry would also need to see that.

13 MR. PIERCE: I'll tell you what, at the end of
14 this he can have my copies.

15 JUDGE ALBERS: Okay.

16 MR. PIERCE: He can have these because I know
17 what I'm looking at.

18 JUDGE ALBERS: Okay. That's fine then. Just
19 so that he can follow along here, we'll let him look
20 at one of these photocopies.

21 MR. PIERCE: I'll try to go by those first two
22 pictures.

1 JUDGE ALBERS: Why don't you tell me where
2 you're going to start and we'll go ahead and mark
3 them.

4 MR. PIERCE: Well, we can go down there. This
5 is about the same picture.

6 What this is -- basically, what I'm
7 trying to show is the ceilings in that building.

8 JUDGE ALBERS: Okay.

9 MR. PIERCE: This is one of the rooms upstairs,
10 one of the bedroom ceilings. That's how it's --

11 JUDGE ALBERS: -- finished?

12 MR. PIERCE: Yeah, how it's finished.

13 JUDGE ALBERS: Okay, I'm just going to call
14 this -- do you remember where we left off with your
15 exhibits the last time actually?

16 I don't want to have multiple --
17 Mr. Fitzhenry is trying to help me out here.

18 MR. FITZHENRY: I will have to look through the
19 transcript.

20 Why don't we - as a suggestion - have
21 group exhibit blank with "A," "B," "C." And then
22 we'll have the number of the exhibit with a letter of

1 designation. Then they can each have their own
2 identification in the record. If his last exhibit
3 was 9, this would be Group Exhibit 10, 10 (A), 10
4 (B), et cetera.

5 JUDGE ALBERS: Okay, we want to get this
6 started off right as far as what number it is.

7 MR. PIERCE: I'm sorry that I didn't number it,
8 because I didn't know that that's --

9 MR. FITZHENRY: The last Complainant Exhibit
10 was "K."

11 Here's what went into the record: A,
12 B, Group Exhibit C, D, E, F, I, J and K. So this
13 could be Group Exhibit L.

14 JUDGE ALBERS: Okay, we'll call them -- well,
15 how many do you have? Probably more than --

16 MR. PIERCE: Twenty-nine.

17 JUDGE ALBERS: Okay. We'll just double-up on
18 the letters if we need it.

19 We'll call it L(L) and L(1). The
20 first one described is L(1).

21 Then I'm looking at one with a picture
22 of the light fixture.

1 MR. PIERCE: And you can have this one here.
2 This is the dining room on the first floor. It shows
3 the ceiling. And the reason that I'm showing the
4 ceiling is because we had some discussion the last
5 time with Mr. Fitzhenry with the insulation of the
6 building.
7 And this is just showing that there's
8 no cracks. That's the first floor. I want you to
9 understand that is the first floor.
10 There is no cracks or nothing like
11 that, no holes in the ceiling is basically what I'm
12 trying to show you.
13 And this one here is the living room
14 on the first floor.
15 JUDGE ALBERS: Okay, this will be L(3) with a
16 green light bulb in the picture.
17 MR. PIERCE: Yeah.
18 JUDGE ALBERS: Can you identify it? That's the
19 living room on the first floor?
20 MR. PIERCE: That's the living room ceiling.
21 Okay, this here -- this other light
22 here. That's one of the bedrooms upstairs. There's

1 three bedrooms upstairs.

2 JUDGE ALBERS: There we go. That's L(4).

3 MR. PIERCE: Yeah, that's showing the ceilings,
4 how they look.

5 This here with the other light fixture
6 that's broke, that was recently broke after all this
7 went on by one of my residents. That's on the second
8 floor. This is on the second floor.

9 JUDGE ALBERS: Okay, bedroom L(5) upstairs,
10 bedroom.

11 MR. PIERCE: In the hallway --

12 JUDGE ALBERS: Okay, upstairs hallway.

13 MR. PIERCE: This one here is the second floor
14 hall -- no, I'm sorry. The second floor living room.

15 JUDGE ALBERS: L(6).

16 MR. PIERCE: This one here. And basically what
17 I'm showing there is that it's well insulated.

18 JUDGE ALBERS: This one here is the upstairs
19 living room?

20 MR. PIERCE: Right. Another angle, that's
21 another angle, second floor.

22 JUDGE ALBERS: L(7).

1 MR. PIERCE: I have yet -- you know, I took all
2 these pictures also to show where he says there's
3 something about there was an attic. There's no attic
4 in that building. There can't be.

5 I mean, if it is, it can't be no
6 bigger than 4 or 5 inches, I mean, if it is an attic.

7 This one right here is the dining room
8 on the first floor just showing the work that was
9 done, showing a different angle how the first floor
10 ceilings go.

11 JUDGE ALBERS: L(8).

12 MR. PIERCE: The only possibility where I think
13 that they -- there was an access to an attic comes
14 from the next two pictures.

15 This is the bedroom on the second
16 floor. Maybe access to the attic is somewhere in
17 that room, because this was added on.

18 MR. FITZHENRY: Is that a sloped roof?

19 MR. PIERCE: Yeah.

20 MR. FITZHENRY: What's the number on that?

21 JUDGE ALBERS: L(9).

22 MR. PIERCE: There's the only other

1 possibility, but I have yet to find an attic at least
2 in this bedroom.

3 JUDGE ALBERS: L(9). This is your next one?

4 MR. PIERCE: Right.

5 JUDGE ALBERS: L(10), and that's the same room,
6 the upstairs bedroom?

7 MR. PIERCE: Yeah, same room.

8 Now these pictures are almost similar
9 to the same pictures that he took the first time that
10 we had our first hearing. It shows the upstairs
11 bathroom window, the outside.

12 It also shows a little bit of the
13 roofing on the side of the building, and then also
14 shows the outside bucket, that the air was coming in.
15 Which I will show that it was impossible as you look
16 into it.

17 JUDGE ALBERS: This is L(11) backyard?

18 MR. PIERCE: Backyard.

19 That shows the insulation of that
20 building to me. And it shows that window, the same
21 almost similar picture he already took. It's just
22 showing how well the building is insulated.

1 JUDGE ALBERS: You're talking about this
2 picture?

3 MR. PIERCE: Yeah, this picture shows like the
4 backyard, the back side of the building. That window
5 there, he shows the same window that he showed that
6 last time; it's a comparison.

7 JUDGE ALBERS: Okay, it looks like aluminum
8 siding and soffit and fascia.

9 MR. PIERCE: Right. And then here is one of
10 them picture on the outside right there. This
11 picture is when he said air was coming in at.

12 It's basically what it is, a bathroom
13 vent. And he said air was escaping in there, and I
14 don't see how he got that. This is L(12).

15 JUDGE ALBERS: Yes.

16 MR. PIERCE: And this here is the inside. That
17 shows the other side of the inside of the bathroom,
18 this picture here. It shows the inside of the
19 bathroom. That's the other side of it from the
20 inside.

21 And I don't see -- you can't even see
22 if any air is coming in there or not, you know what

1 I'm saying? And I did see -- and I did take these in
2 the daytime.

3 JUDGE ALBERS: Let me ask you a question about
4 that before we go on.

5 Now in these two pictures it looks
6 like you can see the outline of a square. Was that
7 a -- that might have been a window at one point and
8 then filled in and put a vent in?

9 MR. PIERCE: Probably so, I don't know for
10 sure. But maybe so. I don't know. Maybe. It was
11 like that when I got the building.

12 JUDGE ALBERS: Okay. Moving on to the next
13 one.

14 MR. PIERCE: Well, from the record, which I
15 don't have in front of me, I remember Mr. Fix saying
16 he didn't recall whether or not if that bathroom had
17 a door, and whether or not it was open or whatever.

18 Here it shows that bathroom shut. It
19 has a door. It had a door before Mr. Fix came out.
20 So if there was any air escaping, it was going to
21 have a harder time escaping before getting in here,
22 because I kept that door shut all the time.

1 There was nobody to use that there,
2 nobody in that building from the first floor used
3 that bathroom because I stayed here.

4 There was a first floor bathroom for
5 women in that church and nobody was allowed to use
6 that.

7 JUDGE ALBERS: L(14) is the interior door of
8 the bathroom?

9 MR. PIERCE: Right.

10 JUDGE ALBERS: On the first floor.

11 MR. PIERCE: And that door was kept shut all
12 the time.

13 JUDGE ALBERS: Okay.

14 MR. PIERCE: This picture here is from the
15 inside, the front door. It shows the insulation
16 around it. He said it wasn't well insulated. You
17 can see there yourself that it's well insulated.

18 JUDGE ALBERS: Okay, now which part is the
19 insulation that you're --

20 MR. PIERCE: Look around. You can see there
21 was no cracks that he was talking about to cause the
22 air to be escaping, you know, to cause my heat to be

1 like that.

2 JUDGE ALBERS: I see the door frame.

3 MR. PIERCE: Yeah, that's the front door of the
4 door frame of the building, in the inside. This is
5 the inside. And we have a picture of the outside.

6 JUDGE ALBERS: So this is L(15).

7 MR. PIERCE: It's got "Exit" on the top of it,
8 an exit door, there should be on the top of it.
9 Maybe it got cut off. I'm not an expert copier.

10 And here's another picture of the
11 door, too. Another picture of the door showing
12 the --

13 JUDGE ALBERS: Okay, L(16) the inside of --

14 MR. PIERCE: Can you see there? It's got
15 insulation. There's no way all this air can be
16 escaping over there.

17 Now here's a living room window by
18 that door, this window here. You can see it's got
19 double windows. You can see it's got double good
20 windows. These are old windows, but can you see any
21 cracks or anything where that air can be escaping?

22 It didn't have no plastic on it, you

1 know, when I took the picture. But there was plastic
2 on there when he came out.

3 JUDGE ALBERS: So L(17) is the inside of the
4 front window?

5 MR. PIERCE: Of the living room window on the
6 first floor. And I will give Mr. Fitzhenry these
7 pictures.

8 JUDGE ALBERS: I think what we'll do after I
9 mark them all, I'll just hand this stack to him and
10 we can be sure he's got the same markings for
11 exhibits on all his.

12 Then we'll all come back to the table
13 and if Mr. Fix has any testimony regarding them.

14 MR. PIERCE: Here it shows the front door
15 outside where he claims he can see right through to
16 the ground from the outside. There's no way.

17 Look at that picture. From the
18 testimony he gave before that he can see outside --
19 or the inside.

20 JUDGE ALBERS: L(18) exterior of front door.

21 MR. PIERCE: Right.

22 And this is the outside of -- by that

1 front door. This is the outside looking through the
2 inside window I showed you. This is the outside.

3 JUDGE ALBERS: Let me try and find that here.
4 Okay.

5 MR. PIERCE: That's the outside of it. You can
6 see how well insulated that is.

7 JUDGE ALBERS: L(19), interior of front door.
8 Let me ask you a question. There appear to be --

9 MR. PIERCE: Yeah, those -- when I had bars, I
10 had bars and the City told me not to do it.

11 JUDGE ALBERS: So that the record is clear, I'm
12 trying to ask, it looks like wood from each corner
13 and in the middle a piece of wood?

14 MR. PIERCE: No, they ain't a piece of wood.
15 The outside piece of wood was -- I had bars. I had
16 wooden bars on the outside because the neighborhood
17 people keep breaking in when I started using the
18 building. And we took them off because the City told
19 us we had to take them off. That's all that is.

20 JUDGE ALBERS: Okay. All right.

21 MR. PIERCE: We'll go to the sanctuary. This
22 is the air conditioner in the sanctuary, one of the

1 air conditioners. This is my office. You can see a
2 little bit of the ceiling, too, in that office.
3 That's the air conditioner in my office. Do you see
4 any cracks?

5 JUDGE ALBERS: L(20), interior view of air
6 conditioner in Mr. Pierce's office.

7 MR. PIERCE: Right.

8 This is the outside of that air
9 conditioner. And that shows you how it's put in
10 there well. You know, I didn't have any plastic on
11 it, but it still shows how well insulated it was. I
12 kept the office door shut and the heat down in that
13 office area.

14 JUDGE ALBERS: L(21) exterior view of the air
15 conditioner in Mr. Pierce's office.

16 MR. PIERCE: This is a picture of the upstairs
17 window that I showed you from the backyard view.
18 This is the inside.

19 JUDGE ALBERS: So L(22) is a picture of inside
20 of the picture depicted in L(11).

21 MR. PIERCE: Right. It just shows the inside.
22 He was saying -- he makes some reference to that

1 window in his testimony, about how there could be air
2 escaping in and around there.

3 But anyway it goes, you can see how
4 well that's insulated; there's no way. It's a well
5 insulated window for that area that it had to be in,
6 in my opinion, and I'm not even a carpenter.

7 This is the sanctuary. So this is in
8 the sanctuary.

9 JUDGE ALBERS: L(23) ceiling in sanctuary.

10 MR. PIERCE: This here is another air
11 conditioner showing how it's put in there.

12 JUDGE ALBERS: Where is this air conditioner
13 at?

14 MR. PIERCE: In the sanctuary.

15 JUDGE ALBERS: L(24), interior view of the air
16 conditioner in the sanctuary.

17 MR. PIERCE: These are the pictures of the
18 windows in the sanctuary. Actually, you can see
19 there's very less air getting in or out. And that
20 sanctuary is really the warmest, the warmest part of
21 probably the whole building. I'll admit that.

22 But you can see how well insulated it

1 is. Those are like those windows they selling now in
2 homes. And here's another picture --

3 JUDGE ALBERS: L(25) is interior view of the
4 window in sanctuary. Correct me if I'm wrong
5 anytime.

6 MR. PIERCE: There are only two like that in
7 the sanctuary.

8 JUDGE ALBERS: L(26) --

9 MR. PIERCE: Those are the only windows in the
10 sanctuary.

11 JUDGE ALBERS: -- (continuing) interior view of
12 the window in the sanctuary. In this picture there
13 appears to be a vase of flowers.

14 MR. PIERCE: Yeah. This kind of shows you how
15 the walls are in the sanctuary to try to give you an
16 idea of the insulation. This is behind the pews to
17 give you an idea of the sanctuary.

18 JUDGE ALBERS: L(27) interior corner of the
19 sanctuary, again, for the record.

20 MR. PIERCE: This is where the altar is and
21 then you have a closet there. That shows the closet
22 door to that area. And that had a gaping hole

1 supposedly from the cosmetic brick wear that's out
2 there.

3 JUDGE ALBERS: You talked about a picture --

4 MR. PIERCE: Gaping. He showed the last time
5 there was some cosmetic brick wear.

6 JUDGE ALBERS: The exterior.

7 MR. PIERCE: And it shows a spot where they
8 made this hole where somebody had set it on fire and
9 tried to burn it down.

10 JUDGE ALBERS: So on the other side of this
11 door is a closet. The outside wall of that closet
12 there --

13 MR. PIERCE: This is the inside closet to the
14 outside where that area -- I'm going to show you the
15 inside.

16 JUDGE ALBERS: But if I went in that closet, on
17 the inside of that wall of the closet, is that brick
18 on the inside?

19 MR. PIERCE: Yeah. And this is the inside of
20 the closet. Yeah, this is the inside of the closet
21 where I made attempts to shore up that area where
22 after the firemen came in to put that fire out.

1 Because it was cosmetic brick and stuff so I had to
2 re-insulate that. And I did it the best that I could
3 to try and get that fixed. That's the inside of the
4 closet.

5 JUDGE ALBERS: L(29), interior of the sanctuary
6 closet.

7 MR. PIERCE: You can see there also where he
8 said that gaping hole was at. That was insulated,
9 you can see that. That's why I took this picture.

10 Right there you can see the
11 insulation. It had to be teared out because they had
12 that fire, but you can see where it had a wooden
13 frame right there as well. That shows the insulation
14 of the building. That's it. That's all I got on
15 that.

16 JUDGE ALBERS: L(30), interior of the
17 sanctuary.

18 MR. PIERCE: And I just wanted to say have
19 Mr. Fix ask me when he came over that day to come in
20 on the inside and see the inside and take pictures,
21 wouldn't allow them to do so.

22 He took whatever pictures he wanted to

1 take. I got him there and he didn't even see the
2 inside. That's why I'm saying -- that's what I'm
3 showing today, showing you that that building was
4 insulated. There's no way for a \$700 bill for one
5 month.

6 JUDGE ALBERS: Are you finished with your
7 direct statement then?

8 MR. PIERCE: Yeah.

9 JUDGE ALBERS: Okay. Why don't we take a
10 recess.

11 MR. FITZHENRY: Unless you need to take a
12 recess, I'm ready.

13 JUDGE ALBERS: We can do it any way you want
14 it.

15 MR. FITZHENRY: I do have a question for
16 Mr. Pierce, a couple questions perhaps.

17 CROSS-EXAMINATION

18 BY MR. FITZHENRY:

19 Q When did you take these pictures, sir?

20 A I took these right after you'all did your
21 testimony, and after that I seen that I have a chance
22 to present this case.

1 Q You don't have any pictures that you took
2 at or near the time that Mr. Fix took his pictures?

3 A I'm trying to think if I may have some. I
4 would have to dig them up.

5 Q But none of them are in your --

6 A No, these are the pictures basically I took
7 for this hearing.

8 Q All right. You talked about insulation
9 numerous times in describing this picture. What do
10 you understand insulation to be?

11 A Insulation is supposed to keep the air in
12 and keep the air out. That's what I understand it to
13 be.

14 MR. FITZHENRY: That's all I have.

15 JUDGE ALBERS: Okay.

16 MR. FITZHENRY: And then I'd like to ask some
17 questions for Mr. Fix.

18 JUDGE ALBERS: Did you have any questions for
19 Mr. Fitzhenry?

20 MR. PIERCE: No, I don't have anything for
21 Mr. Fitzhenry.

22 JUDGE ALBERS: No, I'm asking if you have any

1 questions -- do you have any redirect for yourself?

2 MR. PIERCE: Well, I'm going by my experience
3 in that building for four years. Again, going back
4 of the fluctuation in the bills. And I'm just trying
5 to state with these pictures that there's some
6 discrepancies somewhere.

7 JUDGE ALBERS: Mr. Fitzhenry, would you like to
8 call your witness?

9 MR. FITZHENRY: Yes. I'd like to call
10 Mr. Michael Fix, please.

11 (Whereupon the Witness was sworn
12 by the Administrative Law
13 Judge.)

14 M I C H A E L F I X,
15 having been first duly sworn by the Administrative
16 Law Judge, witnesseth and saith as follows:

17 DIRECT EXAMINATION

18 BY MR. FITZHENRY:

19 Q Mr. Fix, it's correct that you were here
20 during Mr. Pierce's testimony this morning describing
21 what these pictures depicted?

22 A Yes, I was.

1 Q And do you recall that many of these
2 pictures based on his testimony refer to interior
3 walls or interior ceilings?

4 A Yes.

5 Q Does the integrity of interior wall or
6 interior ceiling have any bearing on whether or not
7 air may be flowing from outside in to the structure?

8 A Not really. I mean, yeah, you've got your
9 walls there, but as far as insulation, it really --
10 there's no insulation in this factor as far as walls
11 go.

12 Q Okay, but my question was -- let's
13 suppose -- let's talk about Group Exhibit L, pictures
14 1 through 4 or 5, ceilings inside the house that
15 showed no cracks in the first floor?

16 A Correct.

17 Q Assuming that to be true, does that have
18 any bearing as to whether or not you may or may not
19 have any air coming from the outside inside the
20 structure?

21 A It's going to block the air.

22 Q Once the air is inside the structure?

1 A Once the air is -- I mean, if you have just
2 like he's showing these ceilings here today, if there
3 was no insulation above those or very little
4 insulation, then the ceilings don't mean anything.

5 In our area of the -- of Illinois
6 here, what they recommend is, on a 2 x 4 structured
7 building, is three and a half inches of insulation in
8 all exterior walls, and 12 inches of insulation in
9 the attic to be adequately insulated.

10 Q And you were here again when he described
11 the pictures, and I have Exhibit L here in front of
12 you --

13 JUDGE ALBERS: Do you know what R-value the
14 insulation is recommended to be?

15 THE WITNESS: R-49 for attics.

16 JUDGE ALBERS: Okay.

17 THE WITNESS: And the walls, R-15, which would
18 be three and-a-half inches.

19 JUDGE ALBERS: You're referring me to the
20 document which you have identified for the record.

21 THE WITNESS: Yeah. I've gotten this off the
22 internet. It's from Owens-Corning Corporation on

1 insulation. On this first page, again based on where
2 you live which is area code 62707, and what they
3 recommend for attics which would be R-49 insulating
4 value. There it just tells you about adding
5 insulation to the attic and then these are exterior
6 walls.

7 BY MR. FITZHENRY:

8 Q Referring again back to Group Exhibit L and
9 you may look at them if you need to to answer any of
10 these questions.

11 Do any of those pictures show any
12 insulation in the walls or ceilings anywhere in the
13 house?

14 A The only picture that shows insulation is
15 where the closet was. But I have no idea of what the
16 R value or how dense or whatever it is.

17 This is behind a paneled wall which
18 tells me this is newer than what the original
19 building was before it had been remodeled and
20 possibly added insulation in this area.

21 But as far as where the homeless
22 shelter was, I still don't have any idea whatsoever

1 if there's insulation in there or not

2 Q Prior to the hearing today, Mr. Fix, did
3 you have an opportunity to review your prior
4 testimony?

5 A Yes, I did.

6 Q And, again, referring back to Group Exhibit
7 L, do any of those pictures there support any of
8 those findings or conclusions that you offered to the
9 Commission?

10 A No.

11 Q Well, let me point to exhibit -- what's
12 been marked as L(18).

13 A Uh-huh.

14 Q It shows the outside of the structure?

15 A Uh-huh.

16 Q And it shows a portion of the masonry. Do
17 you recall your testimony previously with regard to
18 the condition of some of the masonry in the outside
19 structure?

20 A Uh-huh.

21 Q What was that testimony?

22 A That I believed there was -- it had several

1 cracks and different things in it around the door
2 frame from the inside looking out or with the door
3 closed you could see daylight around the door frame,
4 and at the bottom around the threshold.

5 You can also see here where this
6 weather stripping is.

7 JUDGE ALBERS: Which one was that again?

8 MR. FITZHENRY L(18).

9 BY MR. FITZHENRY:

10 Q And, again, I asked you this questions
11 earlier and you've been present during Mr. Pierce's
12 testimony this morning and you've had a chance to
13 review Group Exhibit L, is there anything that you
14 heard this morning or seen this morning that would
15 change any of the things that you've said previously?

16 A No. I saw what I saw that day and that's
17 what I testified.

18 MR. FITZHENRY: Thank you. That's it.

19 JUDGE ALBERS: Do you have any questions for
20 Mr. Fix?

21 MR. PIERCE: Yes.

22

1

2

CROSS-EXAMINATION

3

BY MR. PIERCE:

4

Q Mr. Fix, once again I notice that you say

5

that you got that from where, off the Internet?

6

A Yes.

7

Q What's the name of that?

8

A Owens-Corning. You can have those copies

9

if you like.

10

Q I ask you once again, are you certified in

11

any kind of way to determine the insulation of any

12

buildings?

13

A I'm not certified, but I know what I'm

14

looking at when I see it.

15

Q How long have you worked for AmerenCILCO?

16

A Approximately thirteen and a half years.

17

Q How long have you been an Inspector for

18

those type of situations?

19

A Approximately eleven years.

20

MR. PIERCE: That's it.

21

JUDGE ALBERS: Mr. Fix, we spoke about R

22

values. Would you happen to know what R value is for

1 drywall?

2 THE WITNESS: There is no R value. Perhaps I
3 ought to correct myself. I said thirteen, I've been
4 working for the Company for 15 years and working as
5 an Inspector for thirteen.

6 JUDGE ALBERS: I don't have any more questions.

7 MR. PIERCE: Can I ask one more question?

8 JUDGE ALBERS: Okay.

9 RECROSS-EXAMINATION

10 BY MR. PIERCE:

11 Q Mr. Musik, he's not here?

12 A That is correct.

13 Q Was he an Inspector?

14 A Yes, he was.

15 JUDGE ALBERS: Same type of Inspector?

16 THE WITNESS: Yes, he worked for me.

17 JUDGE ALBERS: Okay. Do you have any redirect?

18 MR. FITZHENRY: No.

19 JUDGE ALBERS: I do want to ask one question
20 for Mr. Pierce.

21 Just so the record is clear, these
22 pictures appear clear to me, but I just want to ask

1 you.

2 This is your typical drywall in the
3 ceilings and walls and your typical panel in the
4 walls?

5 THE WITNESS: To my knowledge, that's panel
6 wood work. The insulation, as you can see the
7 insulation there in the walls, so it's insulated to
8 the best of my knowledge.

9 JUDGE ALBERS: But as far as how it's finished
10 on the interior --

11 MR. PIERCE: Yeah, and in the sanctuary it's
12 mostly finished like that.

13 JUDGE ALBERS: Okay. But it's paneling as
14 opposed to solid wood?

15 THE WITNESS: Right, and I don't know what's
16 behind -- I don't know if there's any type of
17 insulation behind those panels.

18 JUDGE ALBERS: Did that spur any questions on
19 your part?

20 MR. FITZHENRY: No.

21 JUDGE ALBERS: All right.

22 After hearing Mr. Fix's testimony, do

1 you have any further testimony that you'd like to
2 offer in the form of rebuttal?

3 MR. PIERCE: He did bring up that door, and
4 once again I want to point out that when those
5 pictures were taken in the day time, I don't see any
6 daylight in these pictures. He said he saw daylight
7 when he came up there. I didn't do nothing to that
8 door. I didn't touch it.

9 And if you look at that door again,
10 there's no daylight coming in or out.

11 JUDGE ALBERS: You're talking about the front
12 door.

13 MR. PIERCE: The front door on the first floor.
14 And that's all I want to redirect, that that door is
15 well insulated. It may not have a storm door on it,
16 but it's well insulated. Well, it has a storm, I'm
17 sorry. That's a mistake, it does have a storm door.

18 JUDGE ALBERS: Okay.

19 Do you have anything further?

20 MR. PIERCE: No, sir.

21 JUDGE ALBERS: Is it your intent that Group
22 Exhibit L(1) through (30) be admitted into the

1 record?

2 MR. PIERCE: Yes, sir.

3 JUDGE ALBERS: Do you have any objections?

4 MR. FITZHENRY: I do not.

5 JUDGE ALBERS: Group Exhibit L(1) through (30)
6 is admitted.

7 (Whereupon Complainant's Group
8 Exhibit Numbers L(1) through
9 L(30) were admitted into the
10 record.)

11 JUDGE ALBERS: In light of what I've heard
12 today, I do not perceive any legal issues, and I'd be
13 happy for anyone who would like to argue for briefs
14 on any legal issues.

15 I'll do it right now. If you think
16 there is a legal issue outstanding --

17 MR. PIERCE: The legal issue is it stands as it
18 was. That I feel from what I've stated that I'm not
19 being charged correctly, for correct usage; is that
20 what you're talking about?

21 JUDGE ALBERS: Well, what I'm saying is we have
22 factual arguments and legal arguments. You say the

1 building is --

2 MR. PIERCE: The facts support the claims that
3 the building is insulated.

4 JUDGE ALBERS: Do you have any arguments based
5 on law that would support your claim?

6 MR. PIERCE: I'd have to look that up. In
7 other words, I know what you're asking me.

8 You're asking me is there lawyers I
9 can find to support my claim. Can I look at prior
10 cases and say hey, look at this case. I'm not a
11 lawyer. So I'll have to look to see if there's been
12 a situation like this before, that there's some legal
13 laws changed or made.

14 JUDGE ALBERS: I mean, this is the second time
15 around we've been here. We've already had one round
16 of briefs in this case. And from what I have seen --
17 these additional photographs and testimony I've heard
18 today, in my mind anyway, don't cause me to believe
19 there are any additional legal issues to be
20 addressed.

21 MR. PIERCE: Okay. So all them things --

22 JUDGE ALBERS: As far as legal arguments.

1 MR. PIERCE: Oh, okay. Well, I was wrong. I
2 made a mistake. I do that a lot; I don't give people
3 a chance to finish.

4 JUDGE ALBERS: Well, we've already had one
5 round of briefs --

6 MR. PIERCE: Right.

7 JUDGE ALBERS: -- (continuing) previously in
8 this docket.

9 MR. PIERCE: Yeah, we've already got the legal
10 things on the table?

11 JUDGE ALBERS: Right. And what I'm saying is,
12 is there anything additional after hearing the
13 arguments today and seeing these photographs --

14 MR. PIERCE: Well, I feel that, as I already
15 said, I feel that I'm being harassed, but you said I
16 don't have any proof of that. You said that last
17 time, but I still think I'm being --

18 JUDGE ALBERS: I think we've limited the docket
19 to the arguments of the Complaint. And we find that
20 earlier in this proceeding that it was the proper
21 rate that this property should be assessed.

22 MR. PIERCE: I'm still disputing that.

1 JUDGE ALBERS: I understand. I mean, I haven't
2 heard any additional arguments on that and whether or
3 not the January bill is correct.

4 MR. PIERCE: Right. It still stands the same.

5 JUDGE ALBERS: Okay. You need to define the
6 scope of the docket to that one fact.

7 MR. PIERCE: Well, that's what I'm saying. I
8 understand.

9 JUDGE ALBERS: Mr. Fitzhenry, do you see any
10 need for briefs after what you've seen today?

11 MR. FITZHENRY: No, we're comfortable with the
12 briefs as they stand. If you would like factual
13 argument on the base evidence, we could offer that.

14 JUDGE ALBERS: Well, in lieu of briefs, I was
15 going to ask both of you if you'd like to make any
16 closing statements.

17 MR. FITZHENRY: I'd be happy to. And we are
18 focused on the evidence today. We're not going to
19 rehash and reargue all the legal arguments and the
20 testimonies.

21 JUDGE ALBERS: Right. Everything that's
22 already in the record still stands and will be

1 considered by the Commission. If you wanted to refer
2 back to any of that, you can refer to it.

3 MR. FITZHENRY: I'll be quick then, Judge.

4 CLOSING STATEMENT

5 BY MR. FITZHENRY:

6 In my view, Mr. Pierce's testimony today is --
7 well, the pictures really prove nothing whatsoever
8 from the testimony when these pictures were taken
9 just a few months ago whereas Mr. Fix's testimony and
10 his pictures that were offered as evidence were at a
11 point more near in time when the alleged -- well,
12 back to the January 2005 billing. So I don't think
13 showing pictures seven or eight months after the fact
14 really means anything.

15 Second, none of the pictures but one shows
16 anything in terms of insulation. So we really can't
17 conclude from the pictures that there is insulation
18 in the manner that Mr. Fix suggests was appropriate
19 in this hearing for this type of structure,
20 Particularly when we look at pictures of interior
21 walls and interior ceilings which really in
22 themselves don't do anything to protect air coming

1 from the outside to the inside of the structure.

2 In fact, even in Mr. Pierce's own statements he did
3 talk about plastic on the windows because of some
4 cracks here and there, which just sort of support
5 what Mr. Fix already testified previously.

6 He's offered nothing in terms of the
7 appropriate rate and whether it's the rate 510 or
8 550, so frankly we'd be correct to support the
9 Company's position on that.

10 In the end, Judge, and these are pictures of
11 the interior of the structure, they don't do anything
12 to tell you that the pictures that Mr. Fix took
13 previously showing huge gaping holes and cracks and
14 plastic windows and missing pieces, they are what
15 they were there. And they still are what they are
16 now. These pictures don't prove otherwise. Thank
17 you.

18 JUDGE ALBERS: Thank you. Mr. Pierce, your
19 Closing Statement?

20 CLOSING STATEMENT

21 BY MR. PIERCE:

22 First of all, regardless of it being three

1 months when I took these pictures and again the time
2 that Mr. Fix took his pictures, that do not matter
3 because I didn't do anything to change anything. I'm
4 not that type of person. I'm a man of the Lord and I
5 didn't change anything over there at all.

6 Secondly, he said one picture showed
7 insulation. I didn't build the building. But even
8 Mr. Fix himself said there was insulation, and the
9 insulation was fairly, fairly new.

10 And I believe that there are other areas of the
11 building that has insulation, including the so-called
12 attic that I have yet to find and I will try to find
13 it, but I haven't found it yet.

14 So I feel that if there's insulation there,
15 then there should be insulation where it's supposed
16 to be. And I'm sure if they were planning on keeping
17 the building themselves, it exists.

18 Thirdly, I still believe that I should be
19 billed 510 even by the laws of the state of Illinois
20 as well as its commercial laws, whatever way you want
21 to put it. They're the laws that govern AmerenCILCO,
22 plus the fact that I have people living there.

1 People were living there. I was using it as an
2 outreach shelter to try to help the community.
3 People were living there. And I got it from the
4 record and I don't want to go back like Mr. Fitzhenry
5 said, but one of the ladies even said that if you got
6 people living there, you got to be billed at 510. He
7 never explained why the water heater was 510.

8 Finally, the structure pictures that I took
9 were showing the pictures that Mr. Fix didn't show.
10 The only pictures that were sent were pictures that
11 Mr. Fix showed was the door picture.
12 And as you can see for yourself, there's no daylight
13 coming in, no daylight going out. You can see no
14 cracks. Like I said, maybe there might have been
15 some little sliver cracks. But you don't see no big,
16 wide gaping cracks that could cause that much usage.
17 And look at the air conditioners. I admitted that,
18 like Mr. Fitzhenry said, that there's some escape
19 maybe there. But it still doesn't amount to the
20 amount that they were trying to charge me.
21 Now they're in the position now to do that, because
22 we asked. But back then, there's no way. And then

1 you've got to remember there was a mild winter. And
2 I just don't agree with the charges. It should have
3 been 510 and I shouldn't have been charged what I
4 did.

5 JUDGE ALBERS: Well, thank you both for your
6 time. With that, I'll mark the record "Heard and
7 Taken."

8 (Which was all the proceedings
9 had in this cause.)

10 HEARD AND TAKEN

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